

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JEREMY D. SMITH,)	
)	
Plaintiff,)	
)	
v.)	NO. 3:07-0159
)	
MICHAEL J. ASTRUE,)	Judge Nixon/Bryant
)	
Defendant.)	

TO: The Honorable John T. Nixon

REPORT AND RECOMMENDATION

Pending before the Court is the Commissioner's Motion To Dismiss Pursuant To Rule 41(b), Federal Rules of Civil Procedure (Docket Entry No. 25). For the reasons stated below, the undersigned Magistrate Judge **recommends** that the Commissioner's motion be **granted**, and the complaint **dismissed** for failure to prosecute.

Plaintiff, proceeding pro se and in forma pauperis, filed his complaint for Social Security benefits on February 5, 2007. The Commissioner filed his answer and a certified transcript of the administrative record, consisting of two volumes, on April 4, 2007 (Docket Entry Nos. 13 and 14). By order entered April 5, 2007, the Court directed the plaintiff to file his motion for judgment on the administrative record and a supporting brief within 30 days (Docket Entry No. 15). After mail addressed to the plaintiff was returned by the Post Office as undeliverable, the Clerk obtained an updated mailing address for the plaintiff. Upon motion by the defendant, the Court extended the deadline for plaintiff to file his motion for judgment and supporting brief to and including June 11, 2007

(Docket Entry No. 21). After plaintiff failed to file his motion for judgment and brief as directed, the Court on June 21, 2007, issued an order requiring the plaintiff to show cause on or before July 6, 2007, why his complaint should not be dismissed for failure to prosecute (Docket Entry No. 24). Plaintiff has not filed his motion for judgment on the administrative record or his supporting brief, nor has he otherwise filed any response to the Court's order to show cause. The Commissioner now has filed his motion to dismiss pursuant to Rule 41(b) based upon the plaintiff's failure to prosecute this case (Docket Entry No. 25).

RECOMMENDATION

In view of the plaintiff's persistent failure to file his motion for judgment and brief as ordered, and his failure to respond to the Court's order to show cause, the undersigned hereby **RECOMMENDS** that the Commissioner's motion to dismiss be **GRANTED**, and the complaint **DISMISSED** pursuant to Rule 41(b), Federal Rules of Civil Procedure.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

ENTERED this 16th day of July, 2007.

s/ John S. Bryant
JOHN S. BRYANT
United States Magistrate Judge